HIGH COURT OF UTTARANCHAL, AT NAINITAL

Criminal Misc. Application No. 514 of 2005

1. Imran Ahmad S/o Sri Rafiq Ahmad
2. Akhtari Banno W/o Imran Ahmad
3. Shahida @ Saida
   W/o Sri Mohsin, Sister of Imran Ahmad
4. Mohsin S/o Sri Sabbir
   Brother-in-law of Imran Ahamad
   All R/o Sahaspur
   P.S. Sahaspur District Dehradun
5. Aslam S/o Sri Rahis Khan
   R/o village Mansoor Colony
   P.S. Majri
   District Saharanpur, U.P. .....Applicants

Versus

1. State of Uttaranchal
   Through Home Secy.
   Uttaranchal Dehradun
2. Sri Nafis Ahmad
   S/o Sri Rafiq Ahmad
   R/o village Sahaspur
   Thana Sahaspur
   District Dehradun .....Respondents

Hon'ble J. C. S. Rawat, J.

1. Heard Sri Vinod Sharma learned counsel for the applicants and Sri G. S. Sandhu learned A.G.A. for the State.

2. This petition has been filed for quashing criminal proceedings in criminal case No.797/2005 under sections 363, 366, 368, 376, 506 & 120-B I.P.C. pending before the Judicial Magistrate Ist, Dehradun.

3. Brief facts of the case are that on 5.1.2005 Nafis Ahmad lodged an FIR at police station Sahaspur, District Dehradun with the allegations that on 26.12.2004 the prosecutrix-Anzum Naz has been kidnapped by Mohd. Ahmad. After getting marriage, the prosecutrix returned with her husband-Mohd. Ahmad on 7.1.2005. Thereafter, the statement of the prosecutrix was recorded under section 161 & 164 Cr.P.C. The police

investigated the matter and submitted the chargesheet against the applicants. Thereafter, the Magistrate took cognizance against the applicants. Feeling aggrieved by this, the applicants preferred this petition.

4. The learned counsel for the applicants contended that it is a case of love affairs and according to the statement under section 164 Cr.P.C. the prosecutrix has denied the allegation of rape and she has stated that she went with Mohd. Ahmad with her free will. As such, the proceeding against the applicants is liable to be quashed. The learned A.G.A. refuted the contention and contended that according to the prosecution the prosecutrix was minor, whereas the medical report shows that she is major. There is a dispute with regard to the age of the prosecutrix. This court cannot decide the disputed fact. The High Court under section 482 Cr.P.C. should not interfere with the order of the trial court unless there are strong reasons to hold that in the interest of justice and to avoid abuse of process of the court the cognizance against the accused needs to be quashed.

5. The power of this Court under section 482 Cr.P.C. is very limited. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to this Court to quash the same in exercise of the inherent powers under section 482 Cr.P.C. It is not however, necessary that there should be meticulous analysis of the case by the Magistrate to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made by the witnesses that the ingredients of the offence or offences are disclosed and there is no

material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by this Court. The High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is function of the trial court. **{See State of Karnataka Vs. M. Devendrappa & another 2002(2) SBR p/151}.**

6. It has been held in **M. Narayandas Vs. State of Karnataka 2004 Cri.L.J. p/822** that it is settled law that the power to quash a criminal proceeding must be exercised very sparingly and with circumspection. It must be exercised in the rarest of rare cases. It is also settled law that the court would not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint. The Court also cannot inquire whether the allegations in the complaint are likely to be established or not.

7. It is not permissible for the High Court to look into materials, the acceptability of which is essentially a matter of trial. While exercising jurisdiction under section 482 Cr.P.C., it is not possible for this Court to act as if it is a trial court. **{State of M.P. Vs. Awadh Kishore Gupta and others SCC (Cri) 2004 p/353}.**

8. In view of the aforesaid decisions, the petition is devoid of merit. Therefore, the petition is dismissed.

(J. C. S. Rawat, J.)

Dated 11.8.2005

LSR